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PP v. MUHAMMAD YUNUS

COURT OF APPEAL, PUTRAJAYA
ABANG ISKANDAR JCA
VERNON ONG LAM KIAT JCA
SURAYA OTHMAN J
B [APPEAL NO: K-05(H)-101-02-2017]
24 NOVEMBER 2017

CRIMINAL PROCEDURE: *Appeal – Appeal against sentence – Appeal by prosecution – Offence of concealing and harbouring smuggled person – Accused person convicted and sentenced to three years' imprisonment – Whether sentence imposed adequate – Whether ought to be enhanced – Anti-trafficking in Persons and Anti-smuggling of Migrants Act 2007, s. 26H*

CRIMINAL PROCEDURE: *Sentence – Adequacy of sentence – Principles of sentencing – Offence of concealing and harbouring smuggled person – Anti-trafficking in Persons and Anti-smuggling of Migrants Act 2007, s. 26H – Accused person convicted and sentenced to three years' imprisonment – Whether sentence imposed adequate – Whether ought to be enhanced – Whether sentence proportionate with circumstances of how offence was committed – Whether accused person entitled to lenient sentence due to guilty plea – Whether public interest served*

The police arrested one Mohd Hussein ('the first accused') and the respondent following information received that they were involved in the concealment and harbouring of smuggled migrants. The arrest led to the discovery of a house where 14 Myanmarese and 12 Bangaladeshi men, who were in a weak condition, were found. They did not have any valid travel documents and were transported to Malaysia by an agent with a promise of employment. The first accused and the respondent were charged at the High Court under s. 26H of the Anti-trafficking in Persons and Anti-smuggling of Migrants Act 2007 ('the Act'). While the first accused pleaded guilty to the charge, the respondent claimed trial and was found guilty. They were both sentenced to three years' imprisonment. Hence, the present appeal by the prosecution on the grounds that the sentence imposed on the respondent was manifestly inadequate and ought to be enhanced as (i) the respondent was guilty of a serious offence of human trafficking; (ii) six out of 26 persons involved were children and under-aged; and (iii) the respondent did not plead guilty to the charge at the earliest opportunity and only did so after coming to court 11 times. The respondent argued that (i) no violence was involved in the commission of the offence; (ii) judicial time was saved by his guilty plea; and (iii) the appellate court should be slow to disturb the sentence imposed by the sentencing court as different judges may have different sense of justice.

Held (allowing appeal)
Per Abang Iskandar JCA delivering the judgment of the court:

(1) The policy that drives any imposition of a sentence by the court on the offender must always be the considerations of public interest. Public interest is always the paramount interest. Granted that in some deserving cases individual interest may be given prominence, a sentence given in his favour must serve a better good for the general public, in the sense that public interest will be better served by meting out such a sentence on him. In fact, all the recognised approaches in sentencing, such as retributive, punitive, deterrent, preventive or reformative are backed up by strong public interest element considerations. Since criminal law is publicly-enforced, sanctions are necessary in order to hold the strains of frayed social fabric together, caused by the commission of the crime. Appropriate sentencing of offenders by the courts fulfils that essential function within the criminal justice system. (paras 15, 16 & 17)

(2) The appeal court will not interfere with the sentence imposed by the sentencing court if the latter had taken into account all relevant factors and applied all the correct legal principles when it decided to impose the sentence that it did. Otherwise, appellate intervention becomes imminent in that it behoves the appeal court to put right what is a patent wrong pertaining to the sentence that was imposed by the sentencing court. There is such a caveat to be considered before the sentence imposed by the sentencing court becomes immune from appellate intervention. That caveat is necessary in order to avoid arbitrary imposition of sentence by the sentencing court. A sentence to be imposed must be a sentence according to law and established legal principles. (para 18)

(3) Although the HCJ had taken into account most of the factors that ought to be considered before His Lordship passed the sentence, he did not allude to the fact of the health condition of the victims of this trafficking of human beings. All 26 persons were weak. The respondent was asking for monies to be sent by the families of the victims from Myanmar and Bangladesh, to be paid to the agents, failing which the victims would remain locked up in the house in poor condition. It was the most degrading thing to do to another human being. Furthermore, the respondent himself came to Malaysia as a refugee from Myanmar and was a holder of the refugee card issued by the United Nations High Commissioner for Refugees (UNHCR). The fact that he could do this dastardly act on other human beings, more so to some of whom were his own countrymen, was most abhorrent. (para 19)

(4) The sentence imposed by the HCJ was manifestly inadequate. There were no valid extenuating circumstances working in favour of the respondent apart from his pleading guilty to the charge. Merely pleading guilty would not entitle the offender to an automatic lenient sentence by way of substantial discount on imprisonment term to be imposed. The facts definitely warranted an enhancement to the sentence imposed at the High Court. The sentence imposed by the HCJ was set aside and substituted with a sentence of imprisonment of five years. (paras 11, 21, 22 & 23)

Bahasa Malaysia *Headnotes*

Pihak polis menahan seorang bernama Mohd Hussein ('tertuduh pertama') dan responden berikutan maklumat yang diterima bahawa mereka terlibat dengan penyembunyian dan perlindungan migran yang diseludup. Penahanan ini membawa pada penemuan sebuah rumah di mana 14 warga Myanmar dan 12 warga Bangladesh, dalam keadaan lemah, dijumpai. Mereka tidak memiliki dokumen perjalanan sah dan dibawa ke Malaysia oleh ejen yang berjanji untuk memberi mereka kerja. Tertuduh pertama dan responden dipertuduh di Mahkamah Tinggi bawah s. 26H Akta Antipemerdagangan Orang dan Antipenyeludupan Migran 2007 ('Akta'). Tertuduh pertama mengaku bersalah manakala responden mohon dibicarakan dan didapati bersalah. Mereka dijatuhkan hukuman tiga tahun penjara. Maka timbul rayuan ini oleh pihak pendakwaan atas alasan hukuman yang dijatuhkan atas responden nyata tidak memadai dan wajar ditambah kerana (i) responden bersalah atas satu kesalahan serius iaitu pemerdagangan orang; (ii) enam daripada 26 orang yang terlibat adalah kanak-kanak dan bawah umur; dan (iii) responden tidak mengaku bersalah atas pertuduhan semasa peluang terawal dan hanya mengaku selepas 11 kali hadir ke mahkamah. Responden mendalihkan (i) tidak berlaku keganasan dalam pelakuan kesalahan tersebut; (ii) masa kehakiman dijimatkan dengan pengakuan bersalahnya; dan (iii) mahkamah rayuan tidak harus terburu-buru dalam campur tangan hukuman yang dijatuhkan oleh mahkamah yang menjatuhkan hukuman kerana lain hakim mungkin mempunyai penghayatan keadilan berlainan.

Diputuskan (membenarkan rayuan)
Oleh Abang Iskandar HMR menyampaikan penghakiman mahkamah:

(1) Polisi yang mendukung apa-apa pengenaan hukuman oleh mahkamah terhadap pesalah mestilah pertimbangan kepentingan awam. Kepentingan awam sentiasa menjadi kepentingan utama. Mengandaikan bahawa dalam kes-kes yang selayaknya, kepentingan individu harus diberi keutamaan, hukuman yang dijatuhkan berpihak padanya mestilah mendatangkan kebaikan yang lebih besar buat masyarakat awam. Malah kesemua pendekatan yang diiktiraf dalam menjalankan hukuman seperti menghukum, punitif, mencegah, menghalang atau mengubah disokong oleh pertimbangan elemen kepentingan awam yang kuat. Oleh kerana

undang-undang jenayah dikuatkuasakan secara awam, hukuman adalah perlu untuk mengukuhkan struktur sosial yang tegang, disebabkan oleh pelakuan jenayah. Penjatuhan hukuman yang sesuai oleh mahkamah terhadap pesalah-pesalah memenuhi fungsi asas dalam sistem keadilan jenayah.

(2) Mahkamah rayuan tidak akan campur tangan dalam hukuman yang dijatuhkan oleh mahkamah yang menjatuhkan hukuman jika mahkamah tersebut telah mempertimbangkan faktor-faktor relevan dan mengguna pakai kesemua prinsip yang betul apabila memutuskan untuk menjatuhkan hukuman tersebut. Jika tidak, campur tangan rayuan akan berlaku kerana mahkamah rayuan haruslah membetulkan apa yang jelas salah berkenaan hukuman yang dijatuhkan oleh mahkamah yang menjatuhkan hukuman. Terdapat kaveat ini untuk dipertimbangkan sebelum hukuman yang dijatuhkan oleh mahkamah yang menjatuhkan hukuman kebal daripada campur tangan rayuan. Kaveat ini perlu untuk mengelak penjatuhan hukuman dengan sewenang-wenangnya oleh mahkamah yang menjatuhkan hukuman. Hukuman yang dijatuhkan mestilah hukuman yang selaras dengan undang-undang dan prinsip-prinsip undang-undang yang diiktiraf.

(3) Walaupun HMT telah mempertimbangkan faktor-faktor yang sepatutnya dipertimbangkan sebelum beliau menjatuhkan hukuman tersebut, beliau tidak menyentuh keadaan kesihatan mangsa-mangsa pemerdagangan orang ini. Kesemua 26 orang ini dalam keadaan lemah. Responden meminta keluarga mangsa-mangsa dari Myanmar dan Bangladesh menghantar wang untuk dibayar kepada ejen dan jika gagal, mangsa-mangsa kekal terkurung di dalam rumah tersebut dalam keadaan teruk. Ini satu perbuatan yang menjatuhkan maruah manusia lain. Tambahan lagi, responden sendiri datang ke Malaysia sebagai pelarian dari Myanmar dan seorang pemegang kad pelarian yang dikeluarkan oleh Suruhanjaya Tinggi Pertubuhan Bangsa-bangsa Bersatu bagi Pelarian (UNHCR). Fakta bahawa dia boleh melakukan perbuatan pengecut ini terhadap insan lain, khususnya teman senegerinya, amat menjijikkan.

(4) Hukuman yang dikenakan oleh HMT nyata tidak memadai. Tiada hal keadaan sah yang boleh meringankan berpihak pada responden selain pengakuan bersalahnya terhadap pertuduhan. Sekadar mengaku bersalah tidak melayakkan pesalah mendapat hukuman ringan secara automatik melalui diskaun besar tempoh pemenjaraan yang dikenakan. Fakta-fakta sememangnya mewajarkan penambahan hukuman yang dijatuhkan di Mahkamah Tinggi. Hukuman yang dikenakan oleh HMT diketepikan dan diganti dengan hukuman penjara lima tahun.

Case(s) referred to:
Bhandulananda Jayatilake v. PP [1981] 1 LNS 139 FC ***(refd)***
PP v. Jafa Daud [1981] 1 LNS 28 HC ***(refd)***
PP v. Loo Choon Fatt [1976] 1 LNS 102 HC ***(refd)***
PP v. Teh Ah Cheng [1976] 1 LNS 116 HC ***(refd)***
R v. Ball [1951] 35 Cr App R 164 ***(refd)***
Regina v. James Henry Sargeant (1974) 60 Cr App R 74 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 173(m)(ii)

For the prosecution - Anas Bashari; DPP
For the respondent - Burhanudeen Abdul Wahid; M/s Burhan & Co

[Editor's note: For the High Court judgment, please see PP lwn. Mohd Hussein Mohd Kassim & Satu Lagi [2017] 1 LNS 474 (varied).]

Reported by Najib Tamby

JUDGMENT

Abang Iskandar JCA:

The Charge

Bahawa kamu bersama-sama pada 02hb Julai 2015 jam lebih kurang 4.44 pagi, bertempat di Lot 84, Jalan Titi Haji Idris, Kampung Alor Sentap, Mukim Tualang, Pokok Sena, dalam Daerah Kota Setar, dalam Negeri Kedah Darul Aman telah melindungi migran yang diseludup seperti berikut:

1) Romzan Ali (Lelaki), umur 18 tahun, Warganegara Bangladesh (akuan mulut)
2) Mohamad Tarzudin (Lelaki), umur 45 tahun, Warganegara Bangladesh (akuan mulut)
3) Mohamad Shuid (Lelaki), umur 30 tahun, Warganegara Bangladesh (akuan mulut)
4) Mohamad Ali (Lelaki), umur 19 tahun, Warganegara Bangladesh (akuan mulut)
5) Mohamed Shuloh (Lelaki), umur 20 tahun, Warganegara Bangladesh (akuan mulut)
6) Mohamad Hasan (Lelaki), umur 26 tahun, Warganegara Bangladesh (akuan mulut)
7) Mohamad Hasan (Lelaki), umur 20 tahun, Warganegara Bangladesh (akuan mulut)
8) Alamin Muhamad (Lelaki), umur 20 tahun, Warganegara Bangladesh (akuan mulut)

9) Mohamad Ali (Lelaki), umur 18 tahun, Warganegara Bangladesh (akuan mulut)

10) Mohd Fajar Ali (Lelaki), umur 29 tahun, Warganegara Bangladesh (akuan mulut)

11) Mohamad Bashani (Lelaki), umur 18 tahun, Warganegara Bangladesh (akuan mulut)

12) Malik (Lelaki), umur 30 tahun, Warganegara Bangladesh (akuan mulut)

13) Jahir Husin (Lelaki), umur 26 tahun, Warganegara Myanmar (akuan mulut)

14) Mohamad Ismail (Lelaki), umur 22 tahun, Warganegara Myanmar (akuan mulut)

15) Mohamad Yunus (Lelaki), umur 22 tahun, Warganegara Myanmar (akuan mulut)

16) Mohamad Ali (Lelaki), umur 25 tahun, Warganegara Myanmar (akuan mulut)

17) Anuar Sidek (Lelaki), umur 21 tahun, Warganegara Myanmar (akuan mulut)

18) Abdul Munap (Lelaki), umur 54 tahun, Warganegara Myanmar (akuan mulut)

19) Mohamad Kurqon (Lelaki), umur 21 tahun, Warganegara Myanmar (akuan mulut)

20) Abdul Bari (Lelaki), umur 25 tahun, Warganegara Myanmar (akuan mulut)

Oleh yang demikian, kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 26H Akta Anti Pemerdagangan Orang dan Anti Penyeludupan Migran 2007 dan dibaca bersama seksyen 34 Kanun Keseksaan.

Prosecution's Case

[1] Acting upon information, on 2 July 2015, at about 12.30 midnight, ASP James Jins Ngadin Ris ("the complainant") and his police party went to a house at No. 59, Taman Tengku Tabur, Jalan Gangsa, Alor Setar, Kedah. When they arrived at the house, they arrested Mohd Hussein bin Mohd Kassim ("first accused") and Muhammad Yunus ("second accused"/ "the respondent") outside the house.

[2] Based on the interrogations conducted, both accused led the complainant and his men to a house addressed as per the charge. When they arrived at the house, the gate was locked. The first accused opened the gate lock with the key which was in his possession. When they found that the house was also locked, again, the first accused unlocked the house door with the key which was also in his possession.

[3] The complainant and his team then entered the house. Inside the house, they found a locked room at the ground floor of the house. On entering the said room, they found 14 men believed to be Myanmarese. On further search in the kitchen, they found six men believed to be Bangladeshis. At the second floor of the house, they found six men also believed to be Bangladeshis in a room. All the 26 men were found to be weak. Upon inspection, all of them did not have any valid travel documents and were transported to Malaysia by an agent who had promised employment for them in Malaysia.

[4] Both accused were later charged under the above-stated offence. On September 2016, the first accused pleaded guilty to the charge and was sentenced accordingly by the learned High Court Judge ("HCJ"). The respondent on the other hand claimed trial thus his case was adjourned for a few times pending the result of representation made by him to the Public Prosecutor. When the representation was rejected by the Public Prosecutor, on 31 January 2017, the respondent changed his mind. He pleaded guilty to the charge and was sentenced to three years imprisonment' from the date of arrest.

The Appeal

[5] Dissatisfied with the decision, the learned Public Prosecutor appealed against the decision of the learned HCJ to the Court of Appeal pertaining to the sentence that was imposed on the respondent. We heard the appeal on 15 September 2017 and decided that this appeal should be allowed. We therefore substituted the sentence of imprisonment from three years with five years' imprisonment with effect from the date of arrest ie, 2 July 2015. We now proffer the reasons for having so decided.

[6] Before us, the learned Deputy Public Prosecutor ("DPP") advanced three reasons as to why the sentence of three years' imprisonment imposed on the respondent ought to be disturbed and enhanced by this court. They are as follow:

(i) it was contended before us that the offence with which the respondent was guilty of was a serious offence. It was an offence under SOSMA that had serious implication on the security of our country as a whole. In particular, this offence was concerned with human trafficking.

(ii) a total number of 26 persons were involved in this offence as victims of the trafficking act committed by the respondent. Six of these persons were under-aged. They were children. It was an undisputed fact that the respondent had asked for money to be paid to him by the family members of the victims. The HCJ had alluded to this fact in the course of his sentence. It was also indicated to us as to the harsh condition of the house where the victims were being kept. On top of that, weapons such as a samurai sword and a baton were also found in the said house.

(iii) it was also submitted before us that although the respondent had pleaded guilty to the charge, that stance to plead guilty was not made at the first opportunity. In fact, it was made only after the matter had come before the court for 11 times. The respondent was a person under the protection of The United Nations High Commissioner for Refugees ("UNHCR") when he committed this offence.

[7] Premised on the above submissions, the learned DPP had therefore submitted that the sentence of three years was, under the circumstances, manifestly inadequate. It was a case that, according to the learned DPP required our appellate intervention.

[8] On behalf of the respondent, it was submitted before us that all those factors had been considered by the HCJ before he passed sentence on the respondent. It was reiterated by counsel for the respondent that no violence was involved in the commission of this offence.

[9] It was also submitted before us that the first accused, whom the respondent was charged with common intention for the said offence was also sentenced to three years' imprisonment. To this, the learned DPP had responded by stating that there was a pending appeal in the Federal Court, therefore his sentence remained a live issue.

[10] Learned counsel impressed upon us that by pleading guilty, the respondent had saved judicial time. It was submitted by learned counsel that the respondent had pleaded guilty after attempt at negotiations with the Attorney-General's Chambers had failed. By pleading guilty, the respondent should be given a lenient sentence, according to learned counsel for the respondent. He also had submitted before us that on the authority of the case of *Bhandulananda Jayatilake v. PP* [1981] 1 LNS 139; [1982] 1 MLJ 83, this court should be slow to disturb the sentence imposed by the sentencing court as different judge may have different sense of justice and that just because the appeal judges are of the view that a different sentence ought to be meted out is in itself not a valid ground to disturb with the sentence under scrutiny before them. It was also impressed upon us that the respondent was a first offender. Premised upon the above, learned counsel had urged this court to dismiss the appeal by the Public Prosecutor and affirm the sentence that was imposed by the HCJ.

This Court's Decision

[11] Having heard and considered the submissions, both oral as well as written by both parties before us, we found that this is a classic case of human trafficking. We found merits in the appeal by the Public Prosecutor and we agreed with the learned DPP that the sentence imposed by the learned High Court Judge was manifestly inadequate.

[12] The starting point at which to begin, when considering how to impose an appropriate sentence on an offender, to our minds, would be to recall the speech of learned Justice Hashim Yeop Sani in the case of *Public Prosecutor v. Loo Choon Fatt* [1976] 1 LNS 102; [1976] 2 MLJ 256 at p. 257, Hashim Yeop Sani J (as he then was) where His Lordship had said thus:

> In respect of sentencing there can be only general guidelines. No two cases can have exactly the same facts to the minutest detail. Facts do differ from case to case and ultimately each case has to be decided on its own merits. In practice sentences do differ not only from case to case but also from court to court. All things being equal these variations are inevitable if only because of the human element involved. But, of course, there must be limits to permissible variations.
>
> The principles to be applied in imposing sentence however are the same in every case. The High Court sitting in exercise of its revisionary powers will not normally alter the sentence unless it is satisfied that the sentence of the lower court is either manifestly inadequate or grossly excessive or illegal or otherwise not a proper sentence having regard to all the facts disclosed on the record or to all the facts which the court ought to take judicial notice of, that is to say, that the lower court clearly has erred in applying the correct principles in the assessment of the sentence. It is a firmly established practice that the court will not alter a sentence merely because it might have passed a different sentence.

[13] In this regard, the fundamental principle in passing sentence in a criminal case is trite. We can do no better in reminding ourselves of what it is than to revisit and restate the age-old speech by Hilbery J in the celebrated case of *R v. Ball* [1951] 35 Cr. App. R 164 where His Lordship had said:

> In deciding that appropriate sentence, a court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It might deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter a particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest life.

[14] Indeed, that speech by Hilbery J had been recognised as the onset of the modern approach to sentencing, as precursor of a more acceptable holistic approach as opposed to the harsh approach that tended to 'destroy' a convicted prisoner. At least in the perspective of English criminal justice system. (See, *A Modern View of the Criminal Law*, by S.W Stewart, Lecturer in Law, University of Wales)

[15] We have no doubt, in our view, that the policy that drives any imposition of a sentence by the court on the offender must always be the considerations of public interest. As is evidently clear in the above-quoted part of Hilbery J's speech, public interest is always the paramount interest. The speech by Lawton LJ in the case of *Regina v. James Henry Sargeant* (1974) 60 Cr App R 74 only served to galvanize the view that we took on the matter. We found it as necessary to reproduce here the part of Lawton speech relevant to the present discussion like so:

> What ought the proper penalty to be? We have thought it necessary not only to analyse the facts, but to apply to those facts the classical 4 principles of sentencing. Those classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing. I will start with retribution. The Old Testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand, courts must not disregard it. Perhaps the main duty of the court is to lead public opinion. Anyone who surveys the criminal scene at the present time must be alive to the appalling problem of violence. Society, we are satisfied, expects the courts to deal with violence. The weapons which the courts have at their disposal for doing so are few. We are satisfied that in most cases fines are not sufficient punishment for senseless violence. The time has come, in the opinion of this Court, when those who indulge in the kind of violence with which we are concerned in this case must expect custodial sentences. But we are also satisfied that, although society expects the courts to impose punishment for violence which really hurts, it does not expect the courts to go on hurting for a long time, which is what this sentence is likely to do. We agree with the trial judge that the kind of violence which occurred in this case called for a custodial sentence. This young man has had a custodial sentence. Despite his good character, despite the excellent background from which he comes, very deservedly he has had the humiliation of hearing prison gates closing behind him. We take the view that for men of good character the very fact that prison gates have closed is the main punishment. It does not necessarily follow that they should remain closed for a long time. I turn now to the element of deterrence, because it seems to us the trial judge probably passed this sentence as a deterrent one. There are two aspects of deterrence: deterrence of the offender and deterrence of likely offenders. Experience has shown over the years that deterrence of the offender is not a very useful approach, because those who have their wits about them usually find the closing of prison gates an experience which they do not want again. If they do not learn that lesson, there is likely to be a high degree of recidivism anyway. So far as deterrence of others is concerned, it is the experience of the courts that deterrent sentences are of little value in respect of offences

> which are committed on the spur of the moment, either in hot blood or in drink or both. Deterrent sentences may very well be of considerable value where crime is premeditated. Burglars, robbers and users of firearms and weapons may very well be put off by deterrent sentences. We think it unlikely that deterrence would be of any value in this case. We come now to the element of prevention. Unfortunately, it is one of the facts of life that there are some offenders for whom neither deterrence nor rehabilitation works. They will go on committing crimes as long as they are able to do so. In those cases the only protection which the public has is that such persons should be locked up for a long period. This case does not call for a preventive sentence. Finally, there is the principle of rehabilitation. Some 20 to 25 years ago there was a view abroad, held by many people in executive authority, that short sentences were of little value, because there was not enough time to give in prison the benefit of training. That view is no longer held as firmly as it was. This young man does not want prison training. It is not going to do him any good. It is his memory of the clanging of prison gates which is likely to keep him from crime in the future.

[16] Granted that in some deserving cases, individual interest may be given prominence, still a sentence given in his favour must serve a better good for the general public, in the sense that public interest will be better served by meting out such a sentence on him. In other words, it is in the interest of the public that the offender be so sentenced. If such a sentence benefits the offender, it is incidental, as at its highest, it coincides with the larger considerations of public interest. A rehabilitated offender or a reformed offender has the potential of contributing positively to society.

[17] In fact, all the recognised approaches in sentencing such as retributive/punitive, deterrent, preventive, or reformative are backed up by strong public interest element considerations. Criminal law being publicly enforced, therefore sanctions are necessary in order to hold the strains of frayed social fabric together, caused by the commission of the crime. Appropriate sentencing of offenders by the courts fulfill that essential function within the criminal justice system. And as could be seen in the preceding paragraphs above, what Justice Hashim Yeop A Sani J (later the Chief Judge of Malaya) said in *PP v. Loo Choon Fatt case (supra)* had captured rather nicely the kind of challenge facing a sentencing judge who had the unenviable task of deciding on the fate of the offender. That challenge is by no means an easy one, definitely not one akin to a walk in the park. At p. 258 of the *PP v. Loo Choon Fatt case (supra)* this was what His Lordship said: "The correct approach is to strike a balance, as far as possible, between the interests of the public and the interests of the accused."

[18] As regards the case of *Bhandulananda Jayatilake v. PP (supra)* that was cited to us by learned counsel for the respondent, the appeal court will not interfere with the sentence imposed by the sentencing court if the latter had taken into account all relevant factors and applied all the correct legal principles when it decided to impose the sentence that it did. Otherwise,

appellate intervention becomes imminent, in that it behoves the appeal court, as a matter of course, to put right what is a patent wrong pertaining to the sentence that was imposed by the sentencing court. In other words, there is such a caveat to be considered before the sentence imposed by the sentencing court becomes 'immune' from appellate intervention. That caveat is necessary in order to avoid arbitrary imposition of sentence by the sentencing court. A sentence to be imposed must be a sentence according to law. (See, s. 173(m)(ii) of the Criminal Procedure Code.) More important to bear in mind is the decision of Justice Azmi J (as he then was) in the case of *PP v. Jafa Daud* [1981] 1 LNS 28; [1981] 1 MLJ 315; [1981] 1 MLRA 413 where it was reiterated that a sentence must also be imposed according to established legal principles, meaning to say that it would not do that the sentence passed is one that is within the range that is provided by the statute, either in terms of the fine or imprisonment term.

[19] We noted that the HCJ had taken into account most of the factors that ought to be considered before he passed the sentence that he did. Nevertheless, we agreed with the learned DPP that he did not allude to the fact of the health condition of the victims of this trafficking in human beings. All the 26 persons that included six children were weak, which pointed to the fact that they were being under-nourished and not well-fed. Their existence was only discovered when the authorities inspected the house under the control of the respondent, in which they were confined. The respondent was asking for monies to be sent by the families of the victims from Myanmar and Bangladesh, to be paid to the agents, failing which the victims would remain locked up in the house in poor condition. In that regard, the respondent was using the victims as chattels to be traded for monies. If this was not human trafficking, we would not know what is. That is a most degrading thing that one can do to another human being. The other factor that seemed to elude the HCJ's consideration was the fact that the respondent himself was a holder of the refugee card issued from the UNHCR. In other words, he himself was a person who came to this country as a refugee from his country of origin, namely Myanmar. The fact that he could do this dastardly act on other human beings, more so some of whom were his own countrymen, was something we found to be most abhorrent, to say the least.

[20] These two relevant facts, to our minds, must be factored in as valid considerations that must be taken against the respondent in determining the appropriate sentence to be imposed on him.

[21] As such, taking into consideration the totality of the circumstances in this appeal before us, we saw no valid extenuating circumstances working in favour of the respondent, apart from his pleading guilty to the charge. We would reiterate again that merely by pleading guilty would not entitle the

offender to an automatic lenient sentence by way of substantial discount on imprisonment term to be imposed. We noted too that the respondent had pleaded that he had a family to provide for and that a longish imprisonment sentence would adversely affect his family's welfare. This kind of plea is not uncommon coming from offenders before the court passed sentence on them. We needed only to quote from a speech from learned Justice Eussoffe Abdoolcader J (as he then was) in the case of *PP v. Teh Ah Cheng* [1976] 1 LNS 116; [1976] 2 MLJ 186 that: "… one who sups with the devil must use a long spoon."

[22] The factual matrix of this appeal before us definitely warrant an enhancement to the sentence that was imposed by the HCJ, which to our minds was manifestly inadequate. It therefore, with respect, had become incumbent on us to disturb the sentence imposed by the HCJ. The sentence imposed must, as near as possible, be commensurate with the circumstances surrounding the commission of the offence and reflect as well, the court's abhorrence towards such a repulsive conduct of the offender. In this case, the punishment was meant to be punitive against the respondent as well as a deterrence to would be offenders who might entertain an idea of committing a similar offence as did the respondent before us.

[23] In the upshot, we therefore had set aside the sentence imposed by the HCJ and we had substituted the same with a sentence of imprisonment of five years, effective from the date of his arrest. We had issued a warrant of committal against the respondent so that he be committed to prison to undergo his enhanced imprisonment term forthwith. We had so ordered.